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No. 75-303

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

IN THE MATTER OF SAMUEL V. BOSSOV, *Petitioner.*

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Petition for Writ of Certiorari specifically contends that Petitioner was denied due process in that delays substantially hindered his defense against charges of professional misconduct. He expressly complains of a three-year and five-month delay between the completion of the investigation and the filing of any complaint specifying the charges against him, and a two-year and seven-month delay between the completion of hearings and the recommendation of

disciplinary action. The Respondent's[1] Brief in Opposition concedes that these delays were solely the result of the inaction of the Grievance Committee of the Chicago Bar Association, but seeks to obfuscate the constitutional implications of the delays by raising a number of non-responsive and novel issues.

Respondent repeatedly asserts that Petitioner is a "bad man," apparently in the belief that, if true, this would excuse denials of due process. Reviewing the evidence on guilt or innocence is, however, neither appropriate in this forum, nor a reasoned response to claims of constitutional violations.

Respondent apparently contends that because Petitioner was found guilty of the charges below, he could not have been prejudiced by the delays. The Respondent states:

> "Bossov further complains of the loss of memories of those witnesses who appeared against him. It appears to us that if such loss existed, which we do not admit, it must have helped his case and certainly did not weaken his position. What he hoped to accomplish if the hearings had been held at an earlier time is a matter of pure speculation on his part." (Brief in Opp. at p. 13).

This is a remarkable response to the argument that the delays prevented Petitioner from challenging evidence suggesting guilt and from presenting evidence to support his innocence. Contrary to Respondent's bald assertion, what Petitioner "hoped to accomplish"

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[1] The Brief in Opposition has technically been filed by the individual who appeared as *Amicus Curiae* in the proceedings below on behalf of the Grievance Committee of the Chicago Bar Association. For convenience, he will be referred to in this Reply as Respondent.

if the complaint had been issued in a timely manner is not a matter of speculation. Petitioner was charged with soliciting through the use of paid agents. However, the delays resulted in the witnesses being unable to identify these so-called agents. As a result, Petitioner could not challenge the role of *unidentified* persons alleged to have acted for pay on his behalf, or offer evidence to establish the negative fact that he had not hired solicitors. Instead, as Respondent concedes, the essential element of payment was decided by the court below on the basis of "circumstantial evidence."[2]

We reiterate also, that the Court below shifted the burden of proof when it held that the *Petitioner* failed to establish that there was no payment for solicitation. As Respondent now puts it, proof rested on the fact that "Bossov was unable to tell how he got the cases . . . ." (Brief in Opp., at p. 4.)

Respondent attempts to minimize the importance of the delays below on the theory that Petitioner was, in a general way, aware of the investigation and thus could adequately prepare a defense in advance of being informed of the charges against him. Under Respondent's view, Petitioner should have interviewed every person with whom he had ever had professional contacts in order to preserve information that might

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[2] Respondent cites two instances in which the so-called solicitors were identified. One involved a former law clerk and long-time friend of Petitioner. That this individual recommended Petitioner as an attorney hardly supports an inference of paid solicitation. In the other, a witness who had recently suffered a stroke identified Petitioner, but gave a completely inaccurate description of him. In any event, Petitioner could hardly constitute his own paid solicitor.

be relevant to whatever charges might at some later time be brought against him. The logical consequences of Respondent's assertion simply highlight the fact that knowledge of an investigation is no substitute for a specification of charges.

Nonetheless, Respondent takes the extraordinary position that the witnesses' losses of memory resulting from the delays in this case "must have helped [Petitioner's] case and certainly did not weaken his position." (Brief in Opp., at p. 5) As a statement of fact, that is simply untrue as shown above. As a statement of a legal presumption, it is absurd. In *Ross* v. *United States,* 349 F.2d 210 (D.C. Cir. 1965), delays in bringing formal charges contributed to losses of memory by the defendant and the sole prosecution witness. The court rejected the Government's theory that the defendant had to show specifically that the memory losses prejudiced his case and the conviction was reversed. Here, the denial of due process is even clearer, since delay-induced memory losses precluded petitioner from learning the identities of essential participants in the incidents in question, *i.e.,* the alleged solicitors. In a closely analogous case, *United States* v. *Curry,* 284 F. Supp. 458 (N.D. Ill. 1968), the court held that delays in bringing narcotics charges violated the defendant's due process rights where they precluded him from locating a Government informer who allegedly participated in the offense. Similarly, the delays in the present case prevented the Petitioner from identifying, locating, and examining the solicitors he had allegedly hired.

In conclusion, the Brief in Opposition has presented arguments which are either non-responsive or erroneous or both.

Respectfully submitted,

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